

* THE HON'BLE Ms. JUSTICE G. ROHINI

+ WRIT PETITION NO.11152 OF 2007

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% 13/07/2007

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Sri N. Panchala Naidu ... Petitioner

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Vs.

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\$ 1. The Director of Mines & Geology,
8th Floor, BRKR Buildings, Tank Bund Road,
Hyderabad-500 029., and 4 others. ... Respondents

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> Head Note:

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! Counsel for the petitioner : Sri Pannala Srinivas

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^ Counsel for the respondents : Govt. Pleader for Mines &
Geology, and Mrs. N.Shoba

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Cases referred :

[1] AIR 1995 SC 333

² 2002 (4) ALT 755

³ (2004) 3 SCC 553

⁴ AIR 1991 ANDHRA PRADESH 167

⁵ AIR 1993 Supreme Court 147

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11152 OF 2007

Dated: 13-07-2007

Between :

Sri N. Penchala Naidu

... Petitioner

And

1. The Director of Mines & Geology,
8th Floor, BRKR Buildings, Tank Bund Road,
Hyderabad-500 029., and 4 others. ... Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11152 OF 2007

ORDER:

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This writ petition is filed seeking a declaration that the order of the 1st respondent - Director of Mines & Geology, dated 19-5-2007 thereby setting aside the quarry lease granted in favour of the petitioner for rough stone and road metal in Sy.No.438 of Pillaipally Village, Pochampally Mandal, Nalgonda District as arbitrary and illegal. The petitioner also seeks a direction to set aside the consequential order of the 2nd respondent dated 11-6-2007 granting quarry lease over the said area in favour of the 5th respondent.

The facts, in brief, are as under :

The 4th respondent herein was initially granted a quarry lease for rough stone and road metal in Sy.No.438 of Pillaipally Village, Pochampally Mandal, Nalgonda District over an extent of 4 hectares for a period of 15 years vide proceedings of the 2nd respondent dated 17-9-2004 with a condition to execute the lease deed within 90 days from the date of grant. However, the 4th respondent failed to execute the lease deed within the stipulated period of 90 days. Though she

was accorded extension for a further period of 30 days under Rule 13 (1) of the A.P. Minor Mineral Concession Rules, 1966 she could not execute the lease deed. In the circumstances, vide proceedings dated 18-5-2006 the Deputy Director of Mines & Geology, Nalgonda revoked the earlier order granting lease to the 4th respondent.

In the meanwhile the writ petitioner made an application dated 3-12-2005 for grant of quarry lease in the same area in Sy.No.438 of Pillaipally Village. Similarly, the 5th respondent had also made an application dated 16-6-2006 over the same area in Sy.No.438 of Pillaipally Village for grant of quarry lease.

Soon after the order dated 18-5-2006 was passed revoking the grant in favour of the 4th respondent, the Assistant Director of Mines & Geology submitted proposals recommending for grant of quarry lease in favour of the petitioner herein on the ground that being the first applicant the petitioner gets priority over the 5th respondent. On the basis of the same, the 2nd respondent – Deputy Director of Mines & Geology vide proceedings dated 10-1-2007 granted a quarry lease for a period of 15 years in favour of the petitioner subject to terms and conditions laid down in the A.P. Minor Mineral Concession Rules, 1966 (for short, 'the AP Rules, 1966). Under the same order, the application of the 5th respondent was rejected. Aggrieved by the said order, the 5th respondent preferred an Appeal before the 1st respondent - Director of Mines & Geology.

The 4th respondent herein also filed a separate appeal before the 1st respondent against the order of the Deputy Director of Mines & Geology, dated 18-5-2006 under which the lease granted in her favour was revoked.

Both the Appeals preferred by the respondents 4 and 5 were heard together and disposed of by the 1st respondent by a common order dated 19-5-2007. The 1st respondent while allowing the

appeal preferred by the 5th respondent set aside the order of the 2nd respondent dated 10-1-2007 holding that the application of the petitioner which was made much prior to the date of revocation of the lease in favour of the 4th respondent was premature. However, the appeal of the 4th respondent was dismissed holding that since the 4th respondent failed to execute the lease deed within the time stipulated, the order of revocation cannot be held to be illegal.

Questioning the said order dated 19-5-2007, so far as it relates to setting aside the lease in favour of the writ petitioner granted vide order of the 2nd respondent dated 10-1-2007 this writ petition has been filed.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the 5th respondent as well as the learned Government Pleader for the respondents 1 to 3 at the outset raised an objection as to the maintainability of the writ petition on the ground that an alternative remedy of Revision is available under Rule 35-A of the AP Rules, 1966 against the impugned order. It is contended that without exhausting such a Statutory remedy, the petitioner cannot maintain this writ petition.

In support of the said contention, the learned Counsel for the 5th respondent has relied upon a decision of the Supreme Court in *STATE OF GOA AND OTHERS v. M/s. A.H. JAFFAR AND SONS*^[1] as well as a decision of this Court in *GUDA ANJANEYULU v. GOVERNMENT OF ANDHRA PRADESH*^[2].

It is true that Rule 35-A of the AP Rules, 1966 provides for a Revision against the impugned order, however the law is well-settled that the existence of an alternative remedy is not an absolute bar to grant relief in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Particularly where the

dispute does not involve serious questions of fact which require consideration of evidence, this Court can entertain a writ petition under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy. In this regard, it is suffice to refer to the decision of the Supreme Court in ABL INTERNATIONAL LIMITED AND ANOTHER vs. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA^[3] wherein it was held that the power to issue prerogatory writs under Article 226 of the Constitution of India is plenary in nature which can be exercised even in cases of availability of other remedies in appropriate cases where the High Court is satisfied that the action of the State or its Instrumentality is arbitrary and unreasonable so as to violate the Constitutional Mandate of Article 14 or for other valid and legitimate reasons for which the Court thinks fit necessary to exercise the said jurisdiction.

In the case on hand, the facts are not in dispute, and the only question involved i.e., whether the petitioner's application which was admittedly made prior to the order of revocation of the lease granted in favour of the 4th respondent can be termed as premature and liable to be rejected on that ground, requires consideration on interpretation of relevant statutory provisions. Hence, I am not inclined to reject the writ petition at the threshold on the ground of availability of alternative remedy.

Coming to the merits of the case, it is relevant to note that in exercise of the powers conferred under Section 15 (1) of the Mines and Minerals Development and Regulation Act, 1957 (for short 'the Act'), the State Government made A.P. Minor Mineral Concession Rules, 1966 (for short, A.P. Rules, 1966) regulating the grant of mining leases in respect of minor minerals in the State of Andhra Pradesh and for the purposes connected therewith. Rule 12 of the AP Rules, 1966 provides for grant of quarry lease for any minor mineral. Rule 13 of the AP Rules, 1966 provides for disposal of the applications received for grant of quarry leases for any minor mineral.

Since rough stone and road metal are minor minerals, the applications received for quarry lease are required to be considered in accordance with Rules 12 and 13 of the AP Rules, 1966.

Sub-rule (3) of Rule 12 of the AP Rules, 1966 provides for classification of the applications received for minor minerals specified under Schedule-I to Rule 10 which included ***rough stone and road metal***, into four categories. The said Rules also specified the order of preference among the said four categories. The applications received from the individuals come under category (4) under sub-rule (3) of Rule 12 of the AP Rules, 1966 and it is not in dispute that the applications of both the petitioner and the fifth respondent fall under the said category. The fifth proviso to sub-rule (3) of Rule 12 of the AP Rules, 1966 which provides for the order of preference to be given whenever more than one application under category (4) are received runs as under :

“Provided also that whenever more than one application falling under category (4) above are received for grant of a quarry lease and have to be considered in the order of preference specified above, such preference shall be given to the applications according to the date of their receipt, unless the Government, for special reasons, otherwise direct and in case of applications received on the same day, the (Deputy Director) after taking into consideration the particulars furnished in the applications, may grant the lease to any deserving applicant; or he may, with the previous approval of the Director, grant a quarry lease to an applicant whose application was received later in preference to an earlier application for any special reason to be recorded in writing.”

A plain reading of the above proviso shows that the preference shall be given according to the date of receipt of the applications. However, power is conferred on the Deputy Director with the prior approval of the Director to grant a quarry lease to the applicant whose application was received later in preference to the earlier

application for the reasons to be recorded in writing.

In the light of the above rule position, the learned Counsel for the petitioner contended that the petitioner's application dated 3-12-2005 being the earliest in point of time, the petitioner alone is entitled for the grant of lease in question.

On the other hand, the learned Counsel for the 5th respondent contended that since the lease in favour of the 4th respondent dated 17-9-2004 was revoked only on 18-5-2006, as on the date of the petitioner's application the area in question was not available for grant of lease and therefore his application was rightly rejected by the 1st respondent as premature. Thus, according to the learned Counsel, the application of the 5th respondent made on 16-6-2006 i.e., immediately after revocation of the lease in favour of the 4th respondent should be treated as the application first in point of time and therefore the impugned order setting aside the lease granted in favour of the writ petitioner was in accordance with law and warrants no interference.

For proper appreciation of the controversy involved in the matter, at the cost of the repetition, the relevant dates may be noted again :

17-09-2004 : *The 4th respondent was granted lease subject to condition of executing lease deed within 90 days from the date of grant which was extended by another 30 days.*

17-01-2005: *Time granted to 4th respondent for execution of lease deed expired.*

03-12-2005: *Petitioner made an application for quarry lease.*

18-05-2006: *In terms of Rule 13 (1) of the Rules an order was passed by the 2nd respondent revoking the order granting lease in favour of the 4th respondent.*

16-06-2006: *5th respondent made an application for lease over the same area.*

From the above dates, it is apparent that the petitioner's

application dated 3-12-2005 was made prior to the order dated 18-5-2006 revoking the lease granted in favour of the 4th respondent, but after the expiry of time stipulated for execution of the agreement by the 4th respondent. Then, the question that requires consideration is whether the 1st respondent was right in concluding that by the date of the petitioner's application the area covered by the order dated 17-9-2004 was not available for grant of fresh lease and therefore the petitioner's application shall be treated as premature.

It is relevant to note that the lease granted in favour of the fourth respondent vide proceedings dated 17-9-2004 did not come into operation at all and consequently she did not acquire any mining rights in respect of the area in question. By virtue of the order dated 17-9-2004 the 4th respondent had only acquired a right for grant of lease which stood extinguished on the expiry of the time granted to her for execution of the lease deed. As noticed above, the 4th respondent was granted 90 days time from the date of grant i.e., 17-9-2004 for execution of the lease deed and the same was further extended for another 30 days, which expired on 17-1-2005. Thus, the right acquired by the 4th respondent for grant of lease came to an end on 17-1-2005 itself and consequently the area in question is very much available for fresh lease from 18-1-2005 onwards. It is true that under Rule 13 (1) of the AP Rules, 1966, the Deputy Director of Mines & Geology is required to revoke the order granting lease in case no lease deed is executed within the stipulated period or extended period due to any default on the part of the applicant and such an order was passed in the case on hand only on 18-5-2006. However, I am unable to agree with the contention of the respondents that the area covered by the order dated 17-9-2004 was not available for fresh lease till 18-5-2006 i.e, the date on which the Deputy Director of Mines & Geology had passed the order of revocation. Since admittedly the extended period for execution of the lease deed by the

4th respondent expired in the month of January, 2005 itself, the mere fact that the order of revocation, in compliance with the statutory requirements was passed on 18-5-2006 would not extend the right acquired by the 4th respondent for grant of lease till 18-5-2006. The order of revocation dated 18-5-2006, in my considered opinion, has no significance for the purpose of deciding the availability of the area in question for grant of fresh lease particularly in the absence of any specific provision which obligates notifying the availability of area either for fresh grant of lease or on expiry of lease of minor mineral. Hence, all the applications from the prospective applicants received after 17-1-2005 are valid and required to be taken into consideration for the purpose of grant of fresh lease.

It is also relevant to note that the mineral in question being a minor mineral, by virtue of Section 14 of the Act the requirement of notifying the availability of area in the Official Gazette for grant of lease does not apply. The only provision which provides for notifying the availability of area as well as premature applications for grant of mining lease for minor minerals is Rule 9-A which runs as under :

9-A. (1) Reservation of areas for exploitation in the public sector, etc.:- *The State Government may, by notification in the Official Gazette, reserve any area for exploitation by the Government, a Corporation established by any Central, State or Provincial Act or a Government Company within the meaning of Sec. 617 of the Companies Act, 1956 (Central Act 1 of 1956).*

(2) Availability of area for regrant to be notified:-- *No area which has been reserved by the Government under Rule 9-A (1) shall be available for grant of quarry lease unless the availability of the area for grant is notified in the Official Gazette specifying a date (being a date not earlier than thirty days from the date of the publication of such notification in the Official Gazette) from which such area shall be available for grant.*

(3) Premature applications:-- *Applications for the grant of a quarry lease in respect of areas whose availability for grant is required to be notified under Rule 9-A (2) shall if, --*

(a) *No notification has been issued under that*

rule; or

- (b) *Where any such notification has been issued the period specified in notification has not expired, shall be deemed to be premature and shall not be entertained; and the application fee thereon, if any paid, shall be refunded.”*

There can be no dispute that the above rule does not apply to the case on hand since the area in question has never been reserved for exploitation by the Government under Rule 9-A(1) and consequently there is no question of notifying the availability of the area for re-grant under Rule 9-A(2).

In *DEVANGULA LAXMINARAYANA v. THE DIRECTOR OF MINES & GEOLOGY, GOVT. OF A.P. AND OTHERS*^[4] this Court while dealing with identical circumstances where the existing lessee holding lease in respect of a minor mineral upto 18-9-1989 did not apply for renewal of lease within the stipulated period i.e., within 90 days before the expiry of lease, held that an application by a prospective lessee for grant of fresh lease regarding the same area in the absence of a notification regarding the availability of the land for grant of fresh lease could not be termed as premature.

As rightly submitted by the learned Counsel for the petitioner, the same analogy applies to the case on hand.

In the circumstances, the applications made by the prospective applicants seeking grant of fresh lease prior to the order of revocation dated 18-5-2006 cannot be termed as premature. As a matter of fact, it is not possible for the prospective applicants to ascertain whether any such revocation order was passed by the competent authority.

It is interesting to note that the 5th respondent herein is none other than the husband of the 4th respondent and he might have had the knowledge of revocation order dated 18-5-2006 and accordingly made his application immediately thereafter on 16-6-2006.

Viewed from any angle, the petitioner's application cannot be rejected as premature on the mere ground that the same was made

prior to the order of revocation dated 18-5-2006. As expressed above, the order of revocation dated 18-5-2006 has no relevancy either for deciding the availability of the area in question for grant of lease or for deciding the order of preference among the prospective applicants.

The 1st respondent erred in concluding that the application of the petitioner was premature on the basis of the order of revocation dated 18-5-2006 and setting aside the lease granted in favour of the petitioner vide proceedings of the 2nd respondent dated 10-1-2007. The decision of the Supreme Court in THE LABOUR CONTRACT CO-OPERATIVE SOCIETY, PALIKUR vs. DIRECTOR OF MINES & GEOLOGY, HYDERABAD AND OTHERS^[5] relied upon by the 1st respondent while allowing the appeal has no application to the facts of the case and the ratio laid down therein is of no assistance to justify the impugned order.

For the aforesaid reasons, the impugned order dated 19-5-2007 as well as the consequential order of the 2nd respondent granting lease in favour of the 5th respondent dated 11-6-2007 are hereby declared as arbitrary and illegal. Accordingly, both the said orders are set aside and the order of the 2nd respondent dated 10-1-2007 granting lease in favour of the petitioner is upheld.

Writ Petition is accordingly allowed. No costs.

G. ROHINI, J.

Dt. 13-07-2007

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Note:- LR copy to be marked.

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- [\[1\]](#) AIR 1995 SC 333
- [\[2\]](#) 2002 (4) ALT 755
- [\[3\]](#) (2004) 3 SCC 553
- [\[4\]](#) AIR 1991 ANDHRA PRADESH 167
- [\[5\]](#) AIR 1993 Supreme Court 147